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**TRANSMITTAL
FORM**

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Total Number of Pages in This Submission

33

Application Number

10/625,020

Filing Date

23 July 2003

First Named Inventor

Kevin L. PARSONS

Art Unit

3711

Examiner Name

William M. Pierce

ENCLOSURES (Check all that apply)

Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)

Reply to Missing Parts/
Incomplete ApplicationReply to Missing Parts
under 37 CFR 1.52 or 1.53

Drawing(s)



Licensing-related Papers



Petition

Petition to Convert to a
Provisional ApplicationPower of Attorney, Revocation
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After Allowance Communication to TC

Appeal Communication to Board
of Appeals and InterferencesAppeal Communication to TC
(Appeal Notice, Brief, Reply Brief)

Proprietary Information



Status Letter

Other Enclosure(s) (please identify
below):
Certificate of Mailing (1 page);
and
Return Receipt Postcard.

Remarks

TITLE OF INVENTION:

Tactical Defense Device Having Baton And Spray Dispensing Capabilities

CONFIRMATION NO. 8420

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

Welsh & Katz, Ltd.

Signature

Printed name

L. Friedman

Date

29 AUGUST 2007

Reg. No.

37,135

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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Typed or printed name

Catherine Fascetta

Date

29 AUGUST 2007

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL For FY 2007 <input checked="" type="checkbox"/> Applicant claims small entity status. See 37 CFR 1.27		Complete If Known		
		Application Number	10/625,020	
		Filing Date	23 July 2003	
		First Named Inventor	Kevin L. PARSONS	
		Examiner Name	William M. Pierce	
TOTAL AMOUNT OF PAYMENT		(\$) 250.00	Art Unit	3711
			Attorney Docket No.	8342/89199

METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account Deposit Account Number: 23-0920 Deposit Account Name: Welsh & Katz, Ltd.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee

☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Small Entity	
	Fee (\$)	Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims - 20 or HP = _____ x _____ = _____ **Fees Paid (\$)**

HP = highest number of total claims paid for, if greater than 20

Indep. Claims - 3 or HP = _____ x _____ = _____ **Fees Paid (\$)**

HP = highest number of independent claims paid for, if greater than 3

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

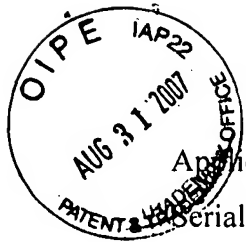
Total Sheets - 100 = _____ /50= _____ (round up to a whole number) x _____ = _____ **Fee Paid (\$)**

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Filing fee for: Appellant's Brief On Appeal **250.00**

SUBMITTED BY			
Signature		Registration No. 37,135 (Attorney/Agent)	Telephone (312) 655-1500
Name (Print/Type)	L. Friedman	Date 29 AUGUST 2007	



Applicant: Kevin L. Parsons
Serial No.: 10/625,020
Filed: 23 JULY 2003
TITLE: TACTICAL DEFENSE DEVICE HAVING BATON
AND SPRAY DISPENSING CAPABILITIES
Confirmation No. 8420
Docket No. 8342/89199

CERTIFICATE OF FIRST CLASS MAILING

Date of Deposit: 29 AUGUST 2007

I hereby certify that this paper is being deposited with the United States Postal Service as "First Class Mail," postage prepaid, addressed to: Mail Stop Appeal Brief-Patents, Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450. This mailing includes: Transmittal form-PTO/SB/21 (1 page); Fee Transmittal form-PTO/SB/17 (1 pg.); Appellant's Brief On Appeal (30 pgs. including Claims Appendix); Check No. 106619 in amount of \$250.00; and Return Receipt Postcard.

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PATENT
8342/89199

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Kevin L. PARSONS)
)
For: TACTICAL DEFENSE DEVICE)
HAVING BATON AND SPRAY)
DISPENSING CAPABILITIES)
)
Ser. No.: 10/625,020)
)
Filed: 23 July 2003)
)
Art Unit: 3711)
)
Primary Examiner: William M. Pierce)
_____)

APPELLANT'S BRIEF ON APPEAL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir or Madam:

This is an Appeal from the Final Office Action mailed 10 April 2007. A Notice of Appeal and the applicable fee were submitted on 10 July 2007.

The applicable fee accompanies this brief. Should there be any deficiency in fees in connection with this Appeal, the Commissioner is respectfully requested to and is hereby authorized to charge any such deficiency in fees to Deposit Account 23-0920.

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1. REAL PARTY IN INTEREST.

The real party in interest is Armament Systems and Procedures, Inc., having a place of business at 2511 East Capitol Drive, Appleton, Wisconsin 54911.

2. RELATED APPEALS AND INTERFERENCES.

There are no appeals, interferences, or judicial proceedings related to, directly affecting or affected by, or having a bearing on the Board's decision in the captioned Appeal.

3. STATUS OF CLAIMS.

Claims 55-73 and 75-102 are currently pending, have been finally rejected, and are being appealed. All other claims have been cancelled without prejudice. That is,

1-54: cancelled without prejudice

55-73: currently pending, finally rejected, subject of this appeal

74: cancelled without prejudice

75-102: currently pending, finally rejected, subject of this appeal

4. STATUS OF AMENDMENTS.

There were no amendments filed subsequent to the final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER.

a. Independent Claim 55

Claim 55 recites a tactical defense device (e.g. 10) for dispersing a chemical from a pressurized spray cartridge. *See e.g.* ¶39, ln 1-6; Fig. 3. The device comprises a dispenser (e.g. 14) adapted to receive the pressurized spray cartridge. *Id.* The dispenser has a first end defining a forward portion that has a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a

longitudinal axis of the dispenser. *See e.g.* ¶48, ln 3-4; Fig. 3. The device comprises an actuator (e.g. 72) for movement in a generally axial direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical. *See e.g.* ¶57; Figs. 5 and 9. The dispenser has a second end opposite the first end, and the device comprises an expandable baton portion (e.g. 12) adapted for connection to the second end of the dispenser. *See e.g.* ¶10; Figs. 1 and 4. The device comprises a cap (e.g. 98) that is accessible on a side surface of the dispenser. *See e.g.* ¶54, ln 5-8; Figs. 1, 5 and 21. The cap is movable between first and second positions; wherein, in the first position, the cap may be depressed in a generally radial direction relative to the longitudinal axis mechanically causing the actuator movement, with movement of the cap between the first and second positions being in a direction that is different than the generally radial direction. *See e.g.* ¶55, ln 5-8. Wherein, depression of the cap is prevented when the cap is in the second position. *Id.* Wherein, the device is generally cylindrical about the longitudinal axis. *See e.g.* ¶40, ln 3; ¶42, ln 1; Fig. 1.

b. Independent Claim 75

Claim 75 recites a tactical defense device (e.g. 10) for dispersing a chemical from a pressurized spray cartridge. *See e.g.* ¶39, ln 1-6; Fig. 3. The device comprises a slidingly insertable sleeve (e.g. 38) for holding the pressurized spray cartridge. *See e.g.* ¶44, ln 4-6; Fig. 3. The device comprises a dispenser (e.g. 14) adapted to receive the sliding insertable sleeve. *Id.* The dispenser has a first end defining a forward portion that has a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a longitudinal axis of the dispenser. *See e.g.* ¶48, ln 3-4; Fig. 3. The device comprises an actuator (e.g. 72) for movement in a generally axial

direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical. *See e.g.* ¶57; Figs. 5 and 9. The device comprises an actuator button (e.g. 78) for mechanically moving the actuator. *See e.g.* ¶52, ln 8-11; Figs. 5 and 17. The dispenser has a second end opposite the first end, and the second end is adapted for separate interchangeable connection with each one of (a) an end cap and (b) an expandable baton portion. *See e.g.* ¶41, ln 1-2; Figs. 1 and 2. The baton portion is structured and dimensioned for the connected baton portion and dispenser to form a combined body for use of the device both as a dispensing apparatus for dispersion of the chemical from the pressurized spray cartridge and as an expandable baton. *See e.g.* ¶9; Fig. 1. The combined body is generally cylindrical about the longitudinal axis. *See e.g.* ¶40, ln 3; ¶42, ln 1; Fig. 1. The end cap is structured and dimensioned for closing the second end of the dispenser for use of the device only as a dispensing apparatus for dispersion of the chemical from the pressurized spray cartridge. *See e.g.* ¶41; Fig. 2.

c. Independent Claim 91

Claim 91 recites a tactical defense device (e.g. 10) for dispersing a chemical from a pressurized spray cartridge. *See e.g.* ¶39, ln 1-6; Fig. 3. The device comprises a dispenser (e.g. 14) adapted to receive the pressurized spray cartridge. *Id.* The dispenser has a first end defining a forward portion that has a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a longitudinal axis of the dispenser. *See e.g.* ¶48, ln 3-4; Fig. 3. The device comprises a nozzle plate (e.g. 50) supported within the forward portion and defining the discharge orifice. *See e.g.* ¶46, ln 1-2; ¶47, ln 6-7; Fig. 3, 6 and 7. The nozzle plate is

interchangeable with any one of a plurality of nozzle plates, each of which comprises a visible outer surface, and each of which is distinguishable from the other nozzle plates by an appearance of its outer surface. The appearances of the different nozzle plate outer surfaces are designed respectively to conceal or to reveal the chemical dispersing use of the device. *See e.g.* ¶49. The device comprises an actuator (e.g. 72) for movement in a generally axial direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical. *See e.g.* ¶57; Figs. 5 and 9. The dispenser has a second end opposite the first end, and the device comprises an expandable baton portion (e.g. 12) adapted for connection to the second end of the dispenser. *See e.g.* ¶10; Figs. 1 and 4. Wherein, the device is generally cylindrical about the longitudinal axis. *See e.g.* ¶40, ln 3; ¶42, ln 1; Fig. 1.

6. GROUNDS OF REJECTION

a. Independent claim 55 was rejected under the second paragraph of 35 U.S.C. §112.

b. Claims 56-73 depend directly or indirectly from claim 55. Though the basis for their rejection was not specifically addressed in the Final Office Action, it appears that they were rejected for the same reason as was claim 55. The Final Office Action expressly stated on page 5 that a prior art basis was not found for rejection of claims 55-73.

c. Claims 75-79 and 81-102 were rejected as being rendered obvious by DeLucia (US Patent No. 3,776,429) in view of Parsons (US Patent No. 6,283,609).

d. Although claim 80 was identified as rejected in the Final Office Action, no basis for rejection was presented, and the Final Office Action expressly stated on page 5

that a prior art basis was not found for rejection of claim 80. It appears that claim 80 actually was objected to as depending from rejected claim 75.

7. ARGUMENT

a. **Claim 55 satisfies the requirement of the second paragraph of 35 U.S.C. §112.**

The Final Office Action rejected independent claim 55 under the second paragraph of 35 U.S.C. §112 (commonly referred to as the “indefiniteness” rejection) for not reciting an actuator button. The Final Office Action cited MPEP §2172.01 and stated that “[t]he specification does not disclose where the apparatus can function without the actuator button cooperating against the actuator.”

The statutory section in issue requires a claim to “particularly [point] out and distinctly [claim] the subject matter which the applicant regards as his invention.” 35 U.S.C. §112, second paragraph. This statutory requirement “means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles.” *Metabolite Laboratories, Inc. v. Laboratory Corp. of America Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004). A claim can fail to satisfy this requirement “[o]nly after a thorough attempt to understand the meaning of a claim has failed to resolve material ambiguities....” *Metabolite*, 370 F.3d at 1366, 71 USPQ2d at 1090. The only thing that the cited section of the MPEP states about the second paragraph of 35 U.S.C. §112 is that it may apply to a claim that fails to interrelate essential elements of the invention. However, claim 55 recites “in the first position, the cap may be depressed in a generally radial direction relative to the longitudinal axis mechanically causing the actuator movement.” Claim 55 does not and need not recite whether the cap acts directly on the actuator or whether there are intervening

components. It recites only that depressing the cap will mechanically cause the actuator movement. The claim does interrelate the elements, and its meaning is discernible to one of ordinary skill in the art.

The Final Office Action cited *Application of Venezia*, 530 F.2d 956, 189 USPQ 149 (CCPA 1976), which actually found nothing indefinite in the claims in that case because one skilled in the art would not have difficulty determining whether a particular collection of components infringed the collection of components defined by the claims. *Venezia*, 530 F.2d at 959, 189 USPQ at 152. Similarly, one skilled in the art would not have difficulty determining, *inter alia*, whether depressing a cap will mechanically cause actuator movement as recited in claim 55. The Final Office Action also cited *Application of Collier*, 397 F.2d 1003, 158 USPQ 266 (CCPA 1968). The court in *Venezia* distinguished *Collier* as having found that the claim in *Collier* did not recite any structural relationship between two elements. *Venezia*, 530 F.2d at 959, 189 USPQ at 152. This was not the case in *Venezia* and, similarly, claim 55 recites the positive relationship that depressing the cap will mechanically cause the actuator movement. This is sufficient. Indeed, the last sentence of the MPEP section cited in the Final Office Action states, “[a] claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph where the various elements... do not directly intercooperate....” MPEP §2172.01.

The Final Office Action stated that the scope of the claim is unclear because the invention allegedly is unworkable absent an actuator button. Be that as it may regarding the workability of the invention, the second paragraph of 35 U.S.C. §112 on which the rejection is based does not require a claim to recite every component necessary to enable

operation of a working device. *See e.g. Rambus Inc. v. Infineon Technologies AG*, 318

F.3d 1081, 65 USPQ2d 1705 (Fed. Cir. 2003). That court stated:

Although one of ordinary skill would know that a memory device needs a block size and address and control information to respond, the claims do not state that such information forms a part of the read request. In fact, the claims do not even require that such information be part of the same request packet. Even though the memory device needs this information, the claims need not recite every component necessary to enable operation of a working device. *Rodime PLC v. Seagate Tech., Inc.*, 174 F.3d 1294, 1303, 50 USPQ2d 1429, 1435 (Fed. Cir. 1999) (applicant need not claim every feature of a working device).

Rambus, 318 F.3d at 1093, 65 USPQ2d at 1713.

Therefore, the applicant respectfully submits that claim 55 does not lack definiteness and is allowable. The Final Office Action expressly stated on page 5 that a prior art basis was not found for rejection of claim 55.

b. Claims 56-73 satisfy the requirement of the second paragraph of 35 U.S.C. §112.

Claims 56-73 depend directly or indirectly from claim 55. Though the basis for their rejection was not specifically addressed in the Final Office Action, it appears that they were rejected for the same reason as was claim 55. The Final Office Action expressly stated on page 5 that a prior art basis was not found for rejection of claims 56-73.

Therefore, claims 56-73 do not lack definiteness and are allowable for the same reasons as discussed above with respect to claim 55.

c. Claims 75-79 and 81-102 are not rendered obvious by DeLucia in view of Parsons.

The Final Office Action rejected claims 75-79 and 81-102 as being rendered obvious by DeLucia in view of Parsons.

1) **Claims 75-77, 79, 82, 83 and 87-90: Neither of the References Discloses a Slidingly Insertable Sleeve**

With respect to independent claim 75, the Final Office Action relied on DeLucia sleeve 46 to correspond with the claimed “slidingly insertable sleeve for holding the pressurized spray cartridge.” However, the DeLucia sleeve 46 is not slidingly insertable. It is “fixed to the housing 14 by rivet means 48.” DeLucia 2:40-42. The Final Office Action asserted that DeLucia capsule 44 is slidable within sleeve 46, and that the claim does not set forth that the sleeve is movable. This is a misreading of the claim that recites the sleeve (and not necessarily the pressurized spray cartridge) as being “slidingly insertable.” The claim then recites “a dispenser adapted to receive the slidingly insertable sleeve,” and this limitation further demonstrates that it is the sleeve that must be slidingly insertable. An example of a slidingly insertable sleeve is discussed in paragraph 44 of the captioned application. Neither DeLucia nor Parsons discloses a slidingly insertable sleeve so claim 75 is allowable.

Claims 76, 77, 79, 82, 83 and 87-90 depend directly or indirectly from independent claim 75, and are not rendered obvious by DeLucia in view of Parsons for the same reason that claim 75 is not rendered obvious as discussed above.

Therefore, claims 75-77, 79, 82, 83 and 87-90 are allowable.

2) **Claims 91 and 96-100: the References Do Not Disclose Interchangeable Nozzle Plates that Define the Discharge Orifice, with the Different Nozzle Plates Having Visible Outer Surfaces Designed Respectively to Conceal or to Reveal the Chemical Dispersing Use of the Device**

With respect to independent claim 91, the cited references do not disclose (1) an interchangeable nozzle plate, (2) defining the discharge orifice, and (3) with the different nozzle plates having visible outer surfaces designed respectively to conceal or to reveal

the chemical dispersing use of the device, and with the different nozzle plates being distinguishable from each other by the appearances of their visible outer surfaces, as recited in claim 91. The Final Office Action referred to the DeLucia head portion 17, that does not disclose a nozzle plate with the three features just mentioned. (It also referred to DeLucia element 71, but DeLucia does not have an element 71 so it is assumed that was a typographical error.) DeLucia does have a wall 60 that defines a discharge orifice, but wall 60 is not (and is not intended to be) visible so it does not satisfy the third of the three above-mentioned features. DeLucia does have a “conventional reflector 18” (DeLucia, 2:25-26) that does not define the orifice, so it does not satisfy at least the second of the three above-mentioned features. There also is no suggestion of using a different reflector in the DeLucia device in order to reveal its chemical dispersing use, so it also does not satisfy the third of the three above-mentioned features.

The Final Office Action asserted that the nozzle plate being interchangeable is functional and that “claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function,” citing *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). However, *Schreiber* said there was nothing intrinsically wrong with defining something by what it does, rather than what it is, in drafting patent claims. *Schreiber*, 128 F.3d at 1478, 44 USPQ2d at 1432. The reason that the functional limitations did not give Schreiber’s claim patentable weight was “because those limitations were found to be inherent in the Harz prior art reference.” *Id.*

The Final Office Action asserted that “interchangeable lens plates are known to flashlights like DeLucia.” Be that as it may, the DeLucia reflector 18 (behind lens 25)

does not define a discharge orifice, so it cannot be the claimed nozzle plate. As also mentioned above, it also cannot be the claimed nozzle plate because it would not make sense to use a different plate behind the DeLucia lens in order to reveal the chemical dispersing use of the device. That would inhibit use of the DeLucia device as a flashlight, because the chemical dispersing use of the device is revealed by using a nozzle plate with a non-reflective surface. *See e.g.* para. 12 of the captioned application.

Therefore, the references do not disclose the nozzle plate recited by claim 91 that, consequently, is allowable.

Claims 96-100 depend directly or indirectly from independent claim 91, and are not rendered obvious by DeLucia in view of Parsons for the same reason that claim 91 is not rendered obvious as discussed above.

Therefore, claims 91 and 96-100 are allowable.

3) Claim 78: the References Do Not Disclose a Guide Pin

Claim 78 depends indirectly from independent claim 75, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 75 is not rendered obvious as discussed above.

In addition, the cited references do not disclose a guide pin for guiding movement of the actuator button as recited in claim 78. The Final Office Action characterized the DeLucia optic rod 138 as the claimed guide pin. DeLucia optic rod 138 reflects light from light bulb 22 to illuminate push button 122. As seen in DeLucia Fig. 1, optic rod 138 does not even extend down to slide block 130, but bends off toward light bulb 22. One end of optic rod 138 appears to be connected to the top of plunger 124. However, the the DeLucia optic rod 138 is not a guide pin and does not in any way guide the

movement of plunger 124 as is disclosed, for example, in paragraph 52 of the captioned application (which discloses actuator button 78 being “moved vertically on the guide pin 74”). As the cited references do not disclose the claimed guide pin, they also do not disclose that a spring for biasing against depression of the actuator is “about the guide pin” as recited in claim 78.

Therefore, claim 78 is allowable.

4) **Claim 81: Not Rendered Obvious by DeLucia in View of Parsons**

Claim 81 depends directly from independent claim 75, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 75 is not rendered obvious as discussed above.

In addition, claim 81 has distinguishing limitations similar to those of independent claim 91 and is not rendered obvious for the reasons discussed above with respect to claim 91.

Therefore, claim 81 is allowable.

5) **Claim 84: the References Do Not Disclose an Annular Retainer Supporting the Nozzle Plate that Defines the Discharge Orifice**

Claim 84 depends directly from independent claim 75, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 75 is not rendered obvious as discussed above.

In addition, the cited references do not disclose an annular retainer supporting the nozzle plate that defines the discharge orifice, as recited in claim 84. DeLucia’s wall 60 (that defines an orifice) is “held in place by a pair of longitudinally extending, diametrically opposed leaf spring retainers 72 and 74.” DeLucia, 3:1-3. The Final Office

Action characterized element 24 as a retainer supporting DeLucia lens 25 which is true, and stated that it defined DeLucia orifice 66 which is not true. The Final Office Action already had characterized the DeLucia rigid tube 62 as the claimed discharge orifice, and tube 62 does appear to go through an orifice defined by wall 60 but, as stated above, wall 60 is not supported by an annular retainer. DeLucia orifice 66 is in tube 68. DeLucia, 2:64. To the extent that an orifice through which tube 68 passes is characterized as the claimed discharge orifice, such orifice is not defined by retainer 24 (as incorrectly stated by the Final Office Action) or by lens 25 that is supported by retainer 24. *See* DeLucia Fig. 1. Therefore, DeLucia lens 25 cannot be the nozzle plate recited by claim 84.

Therefore, claim 84 is allowable.

6) **Claim 85: the References Do Not Disclose an Annular Resilient Seal Member Configured to Cooperate With an Annular Surface of the Nozzle Plate that Defines the Discharge Orifice**

Claim 85 depends directly from independent claim 75, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 75 is not rendered obvious as discussed above.

In addition, the cited references do not disclose an annular resilient seal member configured to cooperate with an annular surface of the nozzle plate that defines the discharge orifice, as recited in claim 85. The Final Office Action asserted without support that such seal members are well known. Be that as it may, the claimed nozzle plate is not disclosed by the references as discussed above, so they also do not disclose a seal member configured to cooperate with an annular surface of that claimed nozzle plate.

Therefore, claim 85 is allowable.

7) **Claim 86: the References Do Not Disclose a Slidingly Insertable Sleeve**

Claim 86 depends directly from independent claim 91, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 91 is not rendered obvious as discussed above.

In addition, for the reasons discussed above with respect to claim 75, the references do not disclose a slidingly insertable sleeve for holding the pressurized spray cartridge as recited in claim 86.

Therefore, claim 86 is allowable.

8) **Claims 92-95: the References Do Not Disclose the Claimed Safety Cap**

Claims 92-95 depend directly or indirectly from independent claim 91, and are not rendered obvious by DeLucia in view of Parsons for the same reason that claim 91 is not rendered obvious as discussed above.

In addition, claim 92 recites a cap accessible on a side surface of the dispenser and moveable between first and second positions. It recites that in the first position the cap may be depressed in a generally radial direction, relative to the longitudinal axis, mechanically causing the actuator movement. It recites that movement of the cap between the first and second positions is in a direction that is different than the generally radial direction. It recites that depression of the cap is prevented when the cap is in the second position. These same limitations are present in independent claim 55, and were the reason the Final Office Action expressly stated on page 5 that a prior art basis was not found for rejection of claims 55-74 and 80. Indeed, the Final Office Action did not

express any reason for asserting that claims 92-95 were rendered obvious. Therefore, claim 92 is not rendered obvious by DeLucia in view of Parsons.

Claims 93-95 depend directly from claim 92, and are not rendered obvious by DeLucia in view of Parsons for the same reason that claim 92 is not rendered obvious as discussed above.

Therefore, claims 92-95 are allowable.

9) **Claim 101: the References Do Not Disclose an Annular Retainer Supporting the Nozzle Plate that Defines the Discharge Orifice**

Claim 101 depends directly from independent claim 91, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 91 is not rendered obvious as discussed above.

In addition, claim 101 has distinguishing limitations similar to those of claim 84 and is not rendered obvious for the reasons discussed above with respect to claim 84.

Therefore, claim 101 is allowable.

10) **Claim 102: the References Do Not Disclose an Annular Resilient Seal Member Configured to Cooperate With an Annular Surface of the Nozzle Plate that Defines the Discharge Orifice**

Claim 102 depends directly from independent claim 91, and is not rendered obvious by DeLucia in view of Parsons for the same reason that claim 91 is not rendered obvious as discussed above.

In addition, claim 102 has distinguishing limitations similar to those of claim 85 and is not rendered obvious for the reasons discussed above with respect to claim 85.

Therefore, claim 102 is allowable.

d. **Claim 80 is Allowable.**

Although claim 80 was identified as rejected in the Final Office Action, no basis for rejection was presented.

The Final Office Action expressly stated on page 5 that a prior art basis was not found for rejection of claim 80, and that is one reason it is allowable.

It appears that claim 80 actually was objected to as depending from rejected claim 75, and also is allowable for the same reasons that claim 75 is not rendered obvious as discussed above.

Therefore, claim 80 is allowable.

8. CLAIMS APPENDIX.

An appendix containing a copy of the claims involved in the appeal is attached.

9. EVIDENCE APPENDIX.

There was no evidence submitted by applicants and relied on in this appeal.

10. RELATED PROCEEDINGS APPENDIX.


There are no related proceedings.

Favorable consideration of this Appeal and allowance of the captioned application are respectfully requested.

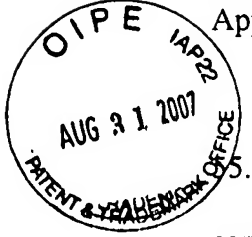
29 August 2007

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Respectfully submitted,



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CLAIMS APPENDIX

5. A tactical defense device for dispersing a chemical from a pressurized spray cartridge, comprising:

a dispenser adapted to receive the pressurized spray cartridge;

the dispenser having a first end defining a forward portion and an opposite second end;

the forward portion having a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a longitudinal axis of the dispenser;

an actuator for movement in a generally axial direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical;

an expandable baton portion adapted for connection to the second end;

a cap accessible on a side surface of the dispenser;

the cap movable between first and second positions;

wherein, in the first position, the cap may be depressed in a generally radial direction relative to the longitudinal axis mechanically causing the actuator movement, with movement of the cap between the first and second positions being in a direction that is different than the generally radial direction;

wherein depression of the cap is prevented when the cap is in the second position;

and

wherein the device is generally cylindrical about the longitudinal axis.

56. The tactical defense device of claim 55, the cap being slidably movable between the first and second positions in a generally axial direction relative to the longitudinal axis.

57. The tactical defense device of claim 55, further comprising:
an actuator button;
the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement.

58. The tactical defense device of claim 55, further comprising:
an actuator button;
the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement;
a guide pin for guiding movement of the actuator button;
a spring about the guide pin for biasing against depression of the actuator button.

59. The tactical defense device of claim 55, the cap comprising an upper surface with raised concentric rings for facilitating tactile feedback and control.

60. The tactical defense device of claim 55, the cap being positioned, on the side surface of the dispenser, to permit operation by a user's thumb of one hand while said hand is gripping the device in a generally horizontal orientation, with said hand raised and said thumb generally facing the user.

61. The tactical defense device of claim 55,
the cap comprising a depending retainer leg;
the retainer leg limiting the direction of the movement of the cap between the first and second positions.

62. The tactical defense device of claim 55, further comprising:
an actuator button;
the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement;
the cap comprising a depending retainer leg;
the actuator button comprising a slot, adapted to slidably receive the retainer leg to enable sliding movement of the cap between the first and second positions.

63. The tactical defense device of claim 55, further comprising:
an actuator button;

the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement;

the cap and the actuator button having mutually cooperable channels for releasably retaining the cap in the first position.

64. The tactical defense device of claim 55, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

the nozzle plate being interchangeable with any one of a plurality of nozzle plates;

each of the plurality of nozzle plates comprising a visible outer surface, and each of the nozzle plates being distinguishable from the other nozzle plates by an appearance of its visible outer surface;

the appearances of the different nozzle plate outer surfaces respectively designed to conceal or to reveal the chemical dispersing use of the device.

65. The tactical defense device of claim 55, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

the nozzle plate comprising a visible outer surface;

the visible outer surface being selected from a group consisting of a surface made of a light-reflective material, a silver color surface, a surface made of a non-reflective

material, a dark buff color surface, a black color surface, a surface made of a brightly colored material, and a red color surface.

66. The tactical defense device of claim 55, further comprising:

an annular retainer in the forward portion;

a nozzle plate supported within the forward portion by the annular retainer and defining the discharge orifice.

67. The tactical defense device of claim 55, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

an annular resilient seal member configured to cooperate with an annular surface of the nozzle plate.

68. The tactical defense device of claim 55, further comprising a slidably insertable sleeve for holding the pressurized spray cartridge.

69. The tactical defense device of claim 55, wherein the dispenser has an annular cover sleeve formed thereon.

70. The tactical defense device of claim 69, wherein the annular cover sleeve is formed of a material that enhances gripping of the dispenser.

71. The tactical defense device of claim 55, wherein the discharge orifice is in axial alignment with a discharge nozzle of the pressurized spray cartridge.
72. The tactical defense device of claim 55, the dispenser comprising:
a tubular body for receiving the pressurized spray cartridge; and
a coupling connector coupled to the tubular body;
the coupling connector comprising the second end of the dispenser;
the coupling connector comprising the cap.
73. The tactical defense device of claim 55, the expandable baton portion comprising telescoping sections.
75. A tactical defense device for dispersing a chemical from a pressurized spray cartridge, comprising:
a slidably insertable sleeve for holding the pressurized spray cartridge;
a dispenser adapted to receive the slidably insertable sleeve;
the dispenser having a first end defining a forward portion and an opposite second end;
the forward portion having a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a longitudinal axis of the dispenser;

an actuator for movement in a generally axial direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical;

an actuator button for mechanically moving the actuator;

the second end adapted for separate interchangeable connection with each one of (a) an end cap and (b) an expandable baton portion;

the baton portion structured and dimensioned for the connected baton portion and dispenser to form a combined body for use of the device both as a dispensing apparatus for dispersion of the chemical from the pressurized spray cartridge and as an expandable baton;

the combined body being generally cylindrical about the longitudinal axis;

the end cap structured and dimensioned for closing the second end of the dispenser for use of the device only as a dispensing apparatus for dispersion of the chemical from the pressurized spray cartridge.

76. The tactical defense device of claim 75, the actuator button being operable from a side surface of the dispenser between the first and second ends of the dispenser.

77. The tactical defense device of claim 75, the actuator movement being caused by depression of the actuator button in a generally radial direction relative to the longitudinal axis.

78. The tactical defense device of claim 77, further comprising:

a guide pin for guiding movement of the actuator button;

a spring about the guide pin for biasing against depression of the actuator button.

79. The tactical defense device of claim 75, the actuator button being positioned to permit operation by a user's thumb of one hand while said hand is gripping the device in a generally horizontal orientation, with said hand raised and said thumb generally facing the user.

80. The tactical defense device of claim 75, further comprising:

a cap accessible on a side surface of the dispenser;

the cap slidably movable between first and second positions in a generally axial direction relative to the longitudinal axis;

the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement;

wherein depression of the cap is prevented when the cap is in the second position.

81. The tactical defense device of claim 75, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

the nozzle plate being interchangeable with any one of a plurality of nozzle plates;

each of the plurality of nozzle plates comprising a visible outer surface, and each of the nozzle plates being distinguishable from the other nozzle plates by an appearance of its visible outer surface;

the appearances of the different nozzle plate outer surfaces respectively designed to conceal or to reveal the chemical dispersing use of the device.

82. The tactical defense device of claim 75, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

the nozzle plate comprising a visible outer surface;

the visible outer surface being selected from a group consisting of a surface made of a light-reflective material, a silver color surface, a surface made of a non-reflective material, a dark buff color surface, a black color surface, a surface made of a brightly colored material, and a red color surface.

83. The tactical defense device of claim 75 wherein the forward portion is enlarged.

84. The tactical defense device of claim 75, further comprising:

an annular retainer in the forward portion;

a nozzle plate supported within the forward portion by the annular retainer and defining the discharge orifice.

85. The tactical defense device of claim 75, further comprising:

a nozzle plate supported within the forward portion and defining the discharge orifice;

an annular resilient seal member configured to cooperate with an annular surface of the nozzle plate.

86. The tactical defense device of claim 91, further comprising a slidingly insertable sleeve for holding the pressurized spray cartridge.

87. The tactical defense device of claim 75, wherein the dispenser has an annular cover sleeve formed thereon.

88. The tactical defense device of claim 87, wherein the annular cover sleeve is formed of a material that enhances gripping of the dispenser.

89. The tactical defense device of claim 75, wherein the discharge orifice is in axial alignment with a discharge nozzle of the pressurized spray cartridge.

90. The tactical defense device of claim 75, the dispenser comprising:
a tubular body for receiving the pressurized spray cartridge; and
a coupling connector coupled to the tubular body;
the coupling connector comprising the second end of the dispenser;
the coupling connector comprising the actuator button.

91. A tactical defense device for dispersing a chemical from a pressurized spray cartridge, comprising:
- a dispenser adapted to receive the pressurized spray cartridge;
 - the dispenser having a first end defining a forward portion and an opposite second end;
 - the forward portion having a discharge orifice for dispersing the chemical through the discharge orifice in a generally axial direction relative to a longitudinal axis of the dispenser;
 - a nozzle plate supported within the forward portion and defining the discharge orifice;
 - the nozzle plate being interchangeable with any one of a plurality of nozzle plates;
 - each of the plurality of nozzle plates comprising a visible outer surface, and each of the nozzle plates being distinguishable from the other nozzle plates by an appearance of its visible outer surface;
 - the appearances of the different nozzle plate outer surfaces designed respectively to conceal or to reveal the chemical dispersing use of the device;
 - an actuator for movement in a generally axial direction relative to the longitudinal axis, between a normally inactivated position and an activated position for dispersing the chemical;
 - an expandable baton portion adapted for connection to the second end;
 - wherein the device is generally cylindrical about the longitudinal axis.
92. The tactical defense device of claim 91, further comprising:

a cap accessible on a side surface of the dispenser;
the cap movable between first and second positions;
wherein, in the first position, the cap may be depressed in a generally radial direction relative to the longitudinal axis mechanically causing the actuator movement, with movement of the cap between the first and second positions being in a direction that is different than the generally radial direction;
wherein depression of the cap is prevented when the cap is in the second position.

93. The tactical defense device of claim 92, further comprising:

an actuator button;
the cap overlying the actuator button when the cap is in the first position, with depression of the cap mechanically causing depression of the actuator button and the actuator movement.

94. The tactical defense device of claim 92, the cap being positioned, on the side surface of the dispenser, to permit operation by a user's thumb of one hand while said hand is gripping the device in a generally horizontal orientation, with said hand raised and said thumb generally facing the user.

95. The tactical defense device of claim 92, the dispenser comprising:

a tubular body for receiving the pressurized spray cartridge; and
a coupling connector coupled to the tubular body;
the coupling connector comprising the second end of the dispenser;

the coupling connector comprising the cap.

96. The tactical defense device of claim 91, wherein the dispenser has an annular cover sleeve formed thereon.

97. The tactical defense device of claim 96, wherein the annular cover sleeve is formed of a material that enhances gripping of the dispenser.

98. The tactical defense device of claim 91, wherein the discharge orifice is in axial alignment with a discharge nozzle of the pressurized spray cartridge.

99. The tactical defense device of claim 91, the visible outer surface being selected from a group consisting of a surface made of a light-reflective material, a silver color surface, a surface made of a non-reflective material, a dark buff color surface, a black color surface, a surface made of a brightly colored material, and a red color surface.

100. The tactical defense device of claim 91 wherein the forward portion is enlarged.

101. The tactical defense device of claim 91, further comprising:
an annular retainer in the forward portion;
the nozzle plate supported within the forward portion by the annular retainer.

102. The tactical defense device of claim 91, further comprising an annular resilient seal member configured to cooperate with an annular surface of the nozzle plate.